

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ROBERT HOEFT and JOAN HOEFT,
Plaintiffs,

No. CV-08-3038-FVS

V.

ALLSTATE INSURANCE COMPANY,
Defendant.

ORDER

THIS MATTER comes before the Court based upon cross motions for summary judgment. The plaintiffs are represented by J. Jay Carroll. The defendant by Sarah L. Eversole.

BACKGROUND

Robert Hoeft has engaged in woodworking as an avocation for many years. During 2000, he and a friend built a detached, two-story structure on the same lot on which Mr. Hoeft's house is situated. The structure contained the equipment and materials Mr. Hoeft used for woodworking. He spent three or four hours every day making crafts. He did not give his woodwork away; he sold it, principally at craft shows. He participated in five to eight shows per year. At each, he distributed business cards, which listed his website. By visiting it, a potential customer could view his work. On May 17, 2007, one of Mr. Hoeft's woodworking machines started a fire in the two-story structure. Prior to that date, Mr. Hoeft and his wife had purchased a homeowners policy from Allstate Insurance Company ("Allstate").

Consequently, they submitted a claim to Allstate. Allstate advised Mr. Hoeft and his wife that their policy did not cover damage to the structure, and that it provided a maximum of \$1000.00 for damage to personal property. The Hoefts disagreed with Allstate's interpretation of their homeowners policy. As a result, they filed an action in state court. Not only do they seek a declaration that their fire-related losses are covered by their homeowners policy, but also they seek damages on the ground Allstate acted in bad faith and violated the State of Washington's Consumer Protection Act. Allstate removed the Hoeft's lawsuit to federal court based upon diversity of citizenship. 28 U.S.C. §§ 1441(b), 1332(a). The matter comes before the Court based upon the parties' cross motions for summary judgment and Allstate's motion to strike portions of two declarations that have been submitted by the Hoefts.

RULING**A. Personal Property**

The Hoeft's homeowners policy provides up to one thousand dollars in coverage for personal property that is "used or intended for use in a business[.]" The issue, then, is whether Mr. Hoeft's woodworking constituted a "business" for purposes of the one-thousand dollar, personal-property limit. The term "business" is defined by Allstate's policy. Accordingly, the term "should be interpreted in accordance with that policy definition." *Kitsap County v. Allstate Ins. Co.*, 136 Wn.2d 567, 576, 964 P.2d 1173 (1998). As defined by the policy, the term "business" means "any full or part-time activity of any kind engaged in for monetary or other compensation or the use of any part of any premises for such purpose[.]" In view of this definition, Allstate is entitled to summary judgment on this issue only if it

1 demonstrates that a rational jury would be compelled to make two
2 findings: (1) Mr. Hoeft's woodworking was a full or part-time
3 activity; (2) he engaged in woodworking for monetary or other
4 compensation. Allstate has satisfied its burden. To begin with, Mr.
5 Hoeft engaged in a part-time activity. He purchased woodworking
6 equipment and materials and spent three to four hours per day making
7 crafts. Also, he marketed and sold the crafts that he made. Whether
8 he ever profited from his woodworking is irrelevant. The policy
9 definition of the term "business" is not limited to activities that
10 are motivated by a desire for profit. The term applies to any
11 activity "engaged in for monetary or other compensation." Mr. Hoeft
12 marketed and sold the crafts he made. Thus, his woodworking qualifies
13 as a "business" for purposes of the personal property limitation.
14 Allstate is under no obligation to pay the Hoefts more than \$1000.00
15 for damaged personal property that Mr. Hoeft used in connection with
16 his woodworking.

17 B. Structures

18 Allstate's policy excludes coverage for "[s]tructures used in
19 whole or in part for business purposes[.]" The term "business
20 purposes" is not defined separately by Allstate's policy. As a
21 result, the Hoefts urge the Court to follow *Stuart v. American States
Ins. Co.*, 134 Wn.2d 814, 953 P.2d 462 (1998). In that case, the
22 policy excluded coverage for "bodily injury or property damage . . .
23 arising out of business pursuits of an insured . . . in connection
24 with . . . a business owned or financially controlled by the
25 insured[.]" *Id.* at 817. The two key terms were "business pursuits"
26 and "business." The policy defined the term "business" as a "trade,
profession or occupation." *Id.* at 820 (internal punctuation omitted).

1 However, the policy did not define the term "business pursuits." *Id.*
2 The Supreme Court of the State of Washington decided that the terms
3 "business pursuits" and "business" are analytically distinct, and that
4 the definition of the term "business" did not shed much light upon the
meaning of the term "business pursuits." Since the term "business
5 pursuit" was not separately defined by the policy, the Washington
6 Supreme Court treated it as an undefined term. In the State of
7 Washington, an undefined term in an insurance policy is given its
8 "plain, ordinary, and popular meaning." *Id.* After considering
9 several possible definitions, the state Supreme Court held that an
activity constitutes a business pursuit if it is (1) "conducted on a
10 regular and continuous basis," and (2) is "profit motivated." *Id.* at
11 822.
12

13 As the Hoefts' point out, Allstate's policy is similar to the
14 *Stuart* policy in at least two respects. First, the terms "business
15 pursuits" (the *Stuart* policy) and "business purposes" (Allstate's
16 policy) are very similar. Second, Allstate's policy defines the term
17 "business," but not the term "business purposes." In light of those
18 two similarities, the Hoefts urge the Court to treat the term
19 "business purposes" as an undefined term and to define it in the same
manner that the Washington Supreme Court defined the term "business
20 pursuits." The Hoefts' argument has considerable force.
21 Nevertheless, while the similarities cited by the Hoefts are real,
22 there is at least one potentially significant difference between the
23 two policies. Whereas the *Stuart* policy defined the term "business"
24 simply as a "trade, profession or occupation," Allstate's policy
25 defines the term as "any full or part-time activity of any kind
engaged in for monetary or other compensation or the use of any part
26

of any premises for such purpose[.]" Obviously, Allstate's definition is far more complex than the definition set forth in the *Stuart* policy. Given the greater complexity of Allstate's definition, a reasonable person could argue that it sheds more light on the term "business purposes" than the *Stuart* policy's parallel definition of the term "business" shed on the term "business pursuits." Even so, it is questionable whether the Washington Supreme Court would treat the term "business purposes" (Allstate's policy) as a defined term. As the state Supreme Court observed in *Stuart*, "exclusions from coverage of insurance are contrary to the fundamental protective purpose of insurance and will not be extended beyond their clear and unequivocal meaning." 134 Wn.2d at 818-19. Furthermore, "[e]xclusions should . . . be strictly construed against the insurer." *Id.* at 819. In view of the preceding rules of construction, it would not be surprising if the state Supreme Court treated the term "business purposes" as an equivocal, undefined term. Were the state Supreme Court to do so, it likely would turn to *Stuart* for a definition. This Court must follow suit. *Cf. Dias v. Elique*, 436 F.3d 1125, 1129 (9th Cir.2006) (in a diversity case, a federal court should interpret state law as it believes the supreme court of the forum state would).

Assuming the *Stuart* definition applies, the only issue is whether a reasonable jury could find that Mr. Hoeft's woodworking was "profit motivated." (Clearly, he conducted his woodworking on a regular and continuous basis.) Insofar as Mr. Hoeft's mental state is concerned, it is important to note that profit need not be the sole motivation for the activity. 134 Wn.2d at 822. "All that is required is that the activity be regular and continuous and that a profit motive exist in conducting the activity." *Id.* Given that gloss on the rule,

1 neither side is entitled to summary judgment with respect to whether
2 the Hoefts' homeowners policy covers the structural damage. The
3 Hoefts are not entitled to summary judgment because it is undisputed
4 Mr. Hoeft actively marketed the crafts he made, and, to the extent he
5 could, sold them rather than keeping them or giving them away. Given
6 these undisputed facts a rational jury could find his woodworking was
7 profit motivated. However, a jury would not be compelled to make such
8 a finding. It is undisputed that woodworking was not Mr. Hoeft's
9 principal source of income. He claims that he sold his crafts simply
10 to cover his expenses and that, in fact, he tended to lose money
11 rather than make it. If the jury credits his testimony (and a
12 rational jury could), then the jury could find his woodworking was not
13 profit motivated. As a result, Allstate is not entitled to summary
judgment on this issue.

IT IS HEREBY ORDERED:

1. The plaintiffs' motion to strike (Ct. Rec. 22) is denied.

2. The defendant's motion to strike (Ct. Rec. 21) is denied.

3. The plaintiffs' motion for summary judgment (**Ct. Rec. 14**) is denied.

4. The defendant's motion for summary judgment (**Ct. Rec. 11**) is granted in part and denied in part.

IT IS SO ORDERED. The District Court Executive is hereby directed to enter this order and furnish copies to counsel.

DATED this 2nd day of March, 2009.

s/Fred Van Sickle
Fred Van Sickle
Senior United States District Judge